

REMARKS:

The enclosed Specification has been amended to include reference to the parent application to which this continuation claims priority. The claims have been amended to be identical to the pending claims in the parent case.

Claims 1-9 and 14-17 are pending in the parent case of which this application is a continuation. In the Office Action dated December 18, 2003, in the parent case, claims 1-9 and 14-17 were rejected under 35 USC § 103(a) as being unpatentable over Herrod (US Patent No. 6,405,049) in view of Watson (US Patent No. 6,449,075). It is submitted that the Watson reference is not prior art against this continuation application because of 35 USC 103(c).

Applicability of 37 CFR § 103(c)

35 USC 103(c) states:

“Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

This rule is the result of a change to 35 USC § 103. “The change to 35 U.S.C. 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution application filed under 37 CFR 1.53(d) and reissues.” MPEP 706.02(I)(1). Because the enclosed continuing application is filed under 37 CFR 1.53(b) and has a filing date after November 29, 1999, it must be given the benefit of 35 USC 103(c) as cited above.

It is believed that the Watson reference does not qualify as prior art under 35 USC § 102 subsections (a), (b) or (c) and, if prior art, must be such “only under one or more of subsections (e), (f) and (g).” Therefore, under 35 USC § 103(c) the Watson reference may not preclude patentability if commonly owned at the time of invention.

Common Ownership of Subject Matter

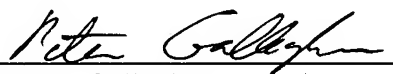
The cited reference by Watson is submitted to have been commonly owned with Applicants' claimed invention at the time of invention. Applicants filed assignment documents with the US Patent Office showing assignment of their interest in the claimed invention to Calibre, Inc. The subject matter of the Watson reference was owned by Calibre, Inc. at that time. Because the subject matter of both of these applications was commonly owned, it is submitted that the Watson reference may not be used to preclude patentability of the claims in this continuation under 35 USC § 103(c).

Accordingly, it is submitted that claims 1-9 and 14-17 of this continuation application are in condition for allowance and an early indication of their allowance is requested. However, if the Examiner has any further matters that need to be resolved, a telephone call to the undersigned attorney at (415) 318-1160 would be appreciated.

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Respectfully submitted,


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